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| 10/669,221 | 09/24/2003 | Maksymilian Pierre Ravel | 2003B101 | 2155 |

23455 7590 05/14/2007
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| EXAMINER |
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JACKSON, MONIQUE R

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| ART UNIT | PAPER NUMBER |
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1773

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05/14/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|------------------------------|--------------------------------|------------------------------|--|
| Office Action Summary | Application No. 10/669,221 | Applicant(s) RAVEL ET AL. | |
| | Examiner Monique R. Jackson | Art Unit 1773 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/23/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>2/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/23/07 has been entered. Claims 1 and 3-18 are pending in the application.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 4 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 4 and 5 recite the limitation "said HDPE" in line 1 however it is unclear whether this limitation refers to the HDPE in layer B, the HDPE in at least one of said A layers, or the HDPE in both layer B and at least one of said A layers.
5. Claims 10 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 10 and 11 recite the limitation "a blend comprising...wt% mPE and...wt% HDPE" in lines 3-4 and line 3, respectively. However, it is unclear whether the mPE recited in these claims refers to "said mLLDPE" described in the parent claim. Further, it is

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noted that “core layer B” and “skin layers A” should recite “said” or “the” to clarify that these layers correspond to the same layers recited in the parent claim.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1 and 3-18 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 23-35 and 37-49 of copending Application No. 10/803,318. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one having ordinary skill in the art at the time of the invention to combine dependent claim limitations.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

9. Claims 1, 3-9 and 16-17 are rejected under 35 U.S.C. 102(a) as being anticipated by Culotta (US H2073 H.) Culotta teaches coextruded, multilayer stretch packaging films comprising mLLDPE having a density of 0.910-0.925 g/cc incorporated into the skin and core film layers, wherein the films can have from as few as three layers or as many as nine layers, with specific examples having a five layer A/B/C/B/A structure (Abstract; Col. 5, lines 1-47; Col. 7, lines 14-29; Examples.) Culotta teaches specific examples comprising skin layers A containing mLLDPE with a density of 0.917 g/cc, B layers comprising a blend of minor amount of HDPE with a major amount of LLDPE or the mLLDPE, and a C layer comprising a blend of major amount of mLLDPE with a minor amount of LDPE, though 0-100wt% LDPE would also be acceptable (Abstract; Tables 1-2; Col. 5, lines 1-47.) Culotta also teaches that the HDPE has a density of 0.920 to 0.960 g/cc and though employed in Layer B of the examples, could be employed in any other layer of the stretch film having as few as three layers or as many as nine layers (*hence in Layer C reading upon the instantly claimed core layer in Claims 1, 6-7; or in Layer A reading upon Claims 3-5; Col. 8, lines 7-21.*) Culotta also teaches that the LDPE has a density of 0.9 to about 0.935 g/cc (*reads upon claimed density range in Claims 8-9*); and though a 0.921 g/cc LDPE was specifically utilized in layer C in the examples, the LDPE having a density as described above may be incorporate into any choice of layers A, B, C, etc., wherein

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the incorporation of LDPE can lead to a desirable combination of film stiffness or high stretch force, and extensibility or elongation at break; *hence in Layer B which would also read upon the claimed core layer or the claimed at least one additional layer of Claim 16; Col. 7, lines 1-30.*)

Claim Rejections - 35 USC § 103

10. Claims 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Culotta. The teachings of Culotta are discussed above. Culotta further teaches that the films can have a thickness of 0.5-1.5 mil (*reads upon less than 50 microns*) and that persons skilled in the art could determine which layer to blend in LDPE given that the incorporation of LDPE can lead to desirable film properties. Though Culotta teaches that both layers B and C can comprise a mixture of LDPE and HDPE and that the skin layers can comprise a mixture of mLLDPE with other PE resins including HDPE, Culotta does not specifically teach the weight percentages as instantly claimed and the resulting 1% secant Modulus and gloss properties. However, one having ordinary skill in the art at the time of the invention would have been motivated to utilize routine experimentation to determine the optimum weight percentages of each PE resin to provide the desired film properties such as 1% secant Modulus MD/TD and 20°/60° gloss difference, for a particular end use, wherein Culotta provides sufficient information with respect to the effect of certain PE resins on the film properties.

Response to Arguments

11. Applicant's arguments with respect to claims 1 and 3-18 have been considered but are moot in view of the new ground(s) of rejection.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R. Jackson whose telephone number is 571-272-1508. The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Monique R. Jackson
Primary Examiner
Technology Center 1700
May 12, 2007